IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 831 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

STATE OF GUJARAT - Appellant(s)
Versus
MAHEMUDBHAI GULAMNABHI KAZI - Opponent(s)

==========

Appearance :
MR KP RAVAL, APP, for the Appellate-State.
MR BS PATEL with MR CHIRAG PATEL for the Respondent.

==========

CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 11/12/2006

ORAL JUDGMENT:-

1. The respondent came to be tried by learned Judicial Magistrate, First Class (Second Court), Bharuch, for offences punishable under

Sections 25(1)(b), 27 and 29 of the Arms Act for having been found in possession of a country-made pistol (Tamancha) and three live cartridges, without licence, on 3.8.1995, at about 20.30 hours near Jadeshwar Crossing on National Highway No.8. He came to be acquitted by the learned J. M. F. C. by judgment and order dated 31st May, 1996, which has given rise to this appeal by the State under section 378 of the Code of Criminal Procedure.

2. The facts of the case, in brief, are that Dy. S. P. Chudasama of Bharuch received an information that one person named as Mahemud Gulamnabi Kazi of village Furaj was likely to visit Jadeshwar Crossing area with an unauthorised weapon in the late evening and, therefore, police arranged a watch at the place. After reaching the place, they summoned Panch witnesses and kept a watch. At about 8.00 P.M., it is alleged that the said Mahemud Gulamnabi Kazi alighted from a truck and headed towards the rickshaw stand when he was apprehended by police. On search of his person, nothing was found, but a Tamancha was found from a plastic bag which was carried by him in his hand. The Tamancha was loaded with two live cartridges and one cartridge was in the bag. A Panchnama was, therefore, drawn to that effect, statements of witnesses were recorded and, ultimately, charge sheet was filed and

Criminal Case No.39636 of 1995 came to be registered.

2.1 Charge against the accused (respondent herein) was framed at Exhibit 3 and the accused pleaded not guilty to the charge and claimed to be tried. The prosecution led evidence and the learned J. M. F. C., considering the evidence, came to a conclusion that the prosecution was not successful in establishing the charges against the accused-respondent and recorded acquittal. The State has, therefore, preferred this appeal.

3. Learned Additional Public Prosecutor, Mr. Raval, submitted that the Trial Court committed an error in not accepting the evidence of police witnesses and in recording acquittal mainly on the ground that independent witnesses have not supported the prosecution case. Mr. Raval submitted that even where Panch witnesses do not support the prosecution case, if the evidence of police witness is found to be otherwise reliable, conviction can be recorded and, in the instant case, all police witnesses have consistently deposed to the effect that the respondent alighted from a truck and was apprehended and, at that time, he was found to be in possession of contraband weapon and ammunition. Simply because Panch witnesses have not supported the

prosecution case, acquittal ought not to have been recorded and, therefore, the appeal may be allowed.

4. Learned Advocate, Mr. Chirag Patel, for the respondent has contended there are only two independent witnesses to the incident and both of them have not supported the prosecution case. He submitted that, it is true that evidence of police witnesses cannot be discarded, if otherwise they are found to be truthful. But, in the instant case, if the deposition of the police witnesses is seen, they all have improved their version from their original statement, which goes to the root of the prosecution case in the sense that the presence of Panch witnesses and seizure/arrest of the accused (respondent herein) in presence of Panch witnesses become doubtful and, therefore, the Trial Court was justified in recording acquittal. Mr. Patel submitted that the judgment of the Trial Court, by no stretch of imagination, can be said to be manifestly erroneous or palpably wrong. The view taken by the Trial Court cannot be said to be an impossible one and the evidence does not lead to an unavailing hypothesis of guilt of the accused and, therefore, in light of decision in the case of ***Ramesh Babulal Doshi v. State of Gujarat (1996) 9 SCC 225***, this Court may not exercise its appellate jurisdiction for setting aside the acquittal after a lapse of ten years. He has also

relied on decision in the case of ***Solanki Chimanbhai Ukabhai v. State of Gujarat, AIR 1983 SC 484***. He, therefore, submitted that the appeal may be dismissed.

5. This Court has examined the record and proceedings in light of the submissions made before it by the learned Additional Public Prosecutor and the learned Advocate for the respondent.

6. On perusal of the record and proceedings, what is found is that the prosecution has examined P.W.3-Arvind Vithalbhai Vasava (Exhibit 7) and P.W.4-Bhupat Gumanbhai (Exhibit 9) as independent witnesses, who were the Panch witnesses in whose presence it is alleged that the respondent was apprehended and was found to be possessing the contraband fire arm and ammunition. Both of these witnesses have not supported the prosecution case. Both of them have said that their signatures were obtained on a readymade Panchnama; that they did not know the contents of the Panchnama and nothing happened in their presence. Both of them were declared hostile and were cross-examined by the prosecution, but nothing turned out of their cross-examination.

7. The prosecution has then examined Police Constable

Rajendrasinh Ranjitsinh, at Exhibit 6 and Police Constable Yakoob Valibhai Patel, at Exhibit 10. These are two police witnesses, who claim to be present in the police party who kept a watch at the place. From their depositions, it is found that they have improved their original version and they, during cross-examination, admitted to have not stated in their police statement about having called the two Panch witnesses and having explained to them about the information of arrival of the accused-respondent. They also admitted to have not stated before the police that the information was given to them by Dy. S.P. Chudasama.

7.1 Witness-Naransinh Ganpatsinh Dodiya (Exhibit 5) admitted during cross-examination that none of the members of the raiding party tried to take down the number of the truck from which the respondent had alighted nor did they stop the truck nor did they chased the truck. He admitted that the accused-respondent came towards them casually and he did not make any attempt to run away. He was apprehended immediately. It is also admitted that Jadeshwar Crossing is a big area and is crowded. He admitted that, first the Panchnama was drawn and, thereafter, the accused was arrested. The witness also admitted to have not stated in his police statement that Dy.S.P. Chudasama had given the name of the accused and the information that he was likely to come at

Jadeshwar Crossing and, therefore, a watch was to be kept.

8. Investigating Officer, P.S.I. Udesinh Ishwarsinh Barat is examined at Exhibit 11. On reading his deposition, it is found that, according to him, the respondent was apprehended when he was about to sit into a rickshaw after alighting from a truck and when the Panchnama was drawn, there were no street lights.

9. This Court finds from the evidence of the police witnesses that, although they, prima facie, appear to be consistent, their evidence suffers from the defect of improvements and inconsistencies regarding the genesis of the entire episode as to how and when the information allegedly received by Dy. S.P. Chudasama was passed over to the officers forming part of the party and whether the Panch witnesses were summoned at the place and Panchnama was drawn in their presence. The evidence is also not clear about the exact place and manner in which the respondent was apprehended. It has come in evidence that the place was crowded, but no independent witness in this regard was examined and the Trial Court has, after considering all these aspects, in addition to change in timing of the F. I. R. and inconsistency regarding presence of street light at the place of arrest, given benefit of doubt to the accused-

respondent, which view cannot be considered as an impossible one or palpably wrong or manifestly erroneous and, therefore, demonstrably unsustainable and, therefore, the order of acquittal cannot be disturbed by allowing the appeal.

9.1 In the case of *Solanki Chimanbhai (supra)*, the Apex Court held that, while exercising appellate powers in acquittal appeal, the Court should give proper weight and consideration to the following matters :-

(1) The views of the Trial Court as to the credibility of the witnesses;

(2) The presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial;

(3) The right of the accused to the benefit of doubt; and

(4) The slowness of Appellate Court in disturbing the finding of fact arrived at by a Judge who had the advantage of seeing the witnesses, which finding would not certainly be disturbed if two reasonable conclusions can be reached on the basis of the evidence or record.

10. Having viewed the evidence from the above angle, this Court is of the view that the Trial Court was not unjustified in recording acquittal and, therefore, the appeal must fail. The appeal is dismissed. The judgment and order of the Trial Court is hereby confirmed.

[A. L. DAVE, J.]

gt